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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91228138
Party	Plaintiff Edible Arrangements, LLC
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Date	10/04/2016
Attachments	Motion to Suspend_Consolidate -.pdf(197743 bytes)

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EDIBLE ARRANGEMENTS, LLC,	:	Opposition No. 91228138
Petitioner,	:	
v.	:	
WikiFoods, Inc.,	:	
Applicant.	:	

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**PETITIONER’S MOTION TO SUSPEND OPPOSITION
ACTION FOR THIRTY DAYS AND TO
CONSOLIDATE WITH OPPOSITION NO. 91228708**

Petitioner, Edible Arrangements, LLC (“Edible Arrangements” or “Petitioner”) hereby moves pursuant to 37 C.F.R. § 2.117(c) and T.B.M.P. § 510.03(a) to suspend the due date of Initial Disclosures for the above-captioned proceeding on the ground that Petitioner and Applicant, WikiFoods, Inc. (“WikiFoods” or “Applicant”) have agreed to a thirty (30) day suspension while the parties explore possible settlement. Applicant has consented to the thirty (30) day suspension.

Registrant also moves pursuant to T.B.M.P. § 511 to consolidate the instant proceeding with Opposition No. 91228708, on the ground that the instant Opposition and Opposition No. 91228708 both involve common questions of law and fact. Applicant has consented to the motion to consolidate.

MEMORANDUM IN SUPPORT

A. The Oppositions Should Be Consolidated Because They Contain Common Issues of Law and Fact

The two oppositions involve common questions of fact and law for the Board to resolve. Both oppositions involve the same opposer and applicant. Edible Arrangements is the opposer to

all three of Applicant's marks that include the term 'EDIBLE,' which are subject to both opposition proceedings. Opposer's grounds for opposition related to Opposer's EDIBLE and EDIBLE ARRANGEMENTS trademarks vis a vis Applicant's use of the term EDIBLE within the word INCREDIBLE by emphasizing the letters that spell EDIBLE apart from the word as a whole. Rule 511 of the Trademark Rules of Practice of the Patent and Trademark Office provides that "[w]hen cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases." See also *World Hockey Ass'n v. Tudor Metal Prods. Corp.*, 185 U.S.P.Q. 246, 248 (T.T.A.B. 1975) (ordering consolidation of two opposition proceedings because it was "equally advantageous to both parties in the avoidance of the duplication of effort, loss of time, and extra expense involved in conducting the proceedings alternately"). Applicant's counsel has consented to this motion.

B. The Consolidated Oppositions Should Be Suspended

The parties further request that the two consolidated oppositions be suspended for thirty (30) days in order to permit the parties to continue ongoing settlement discussions. The Applicants' counsel consented to this motion and to reset the Initial Disclosure due date for Opposition No. 91228138 to November 3, 2016.

C. Discover And Trial Periods Should Be Conformed

Petitioner further requests the discovery and trial periods for the two proceedings be reset should the matter come out of suspension to correspond to the latest of the two schedules (i.e. the schedule should be set for Opposition No. 9128708) to allow the parties maximum time to conduct discovery.

CONCLUSION

For the foregoing reasons, Edible Arrangements respectfully requests that this opposition action be suspended for thirty days or until November 3, 2016. Edible Arrangements further requests consolidation of this action with Opposition No. 91228708. In the event that the Board denies Registrant's request to suspend, Registrant requests that all deadlines be reset to sixty (60) days after such denial.

Dated: Wallingford, CT
October 4, 2016

Respectfully submitted,
EDIBLE ARRANGEMENTS, LLC

By /Susan Daly Stearns/
Intellectual Property and Brand Counsel
Edible Arrangements, LLC
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 4, 2016, I served the foregoing Petitioner's Motion to Suspend Proceeding and to Consolidate with Opposition No. 91228708 on Applicant by mailing a copy, First Class mail, postage prepaid, to Applicant's Attorney of Record addressed as follows:

Jared M. Barrett, Esq.
SEED IP Law Group, LLC
701 Fifth Avenue, Suite 5400
Seattle, WA 98104

_____/Susan Daly Stearns/
Susan Daly Stearns